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SIPDIS

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SUBJECT: AUSTRALIA DOES NOT SUPPORT MANAGEMENT COMMITTEE
FOR KHMER ROUGE TRIBUNAL

REF: A. STATE 126728

[1](#)B. HURTADO-CROWLEY EMAIL 7-11-2005

[1](#)1. (SBU) On July 11, Poloff delivered ref A demarche to Department of Foreign Affairs and Trade (DFAT) ASEAN, Burma, and Cambodia Director Lynette Wood and Executive Officer Gillian Walker seeking to gauge Australian interest in establishing a Management Committee for the Khmer Rouge Tribunal. Walker asked a few questions regarding the structure and function of the Management Committee, such as: whether the Committee would work with the Cambodian part of the KRT or with the organization as a whole; whether the U.S. would support funding the Cambodian government or the UN for such an endeavor; and whether the U.S. had discussed the proposal with Japan. Poloff sent these questions to the Department (ref B) for guidance. Without waiting for the response, however, on July 15, DFAT International Law and Transnational Crime Director Michael Bliss informed us of DFAT's decision.

[1](#)2. (SBU) Bliss stated that, while the GOA strongly supported the Khmer Rouge Tribunal (KRT) and shared U.S. concerns about monitoring the KRT's development, the U.S. and Australia had probably "missed their chance" to establish a Management Committee if that was an option. The current structure of the KRT simply did not allow for a Management Committee, according to Bliss. The Australians would prefer to monitor the KRT through their embassies in relevant countries abroad and through the UN. Bliss added that the degree to which the Committee was inserted into the KRT and exerted control might be problematic and not the best way to project our interests. Cambodian political will was key to the KRT's success, Bliss emphasized, and donors might send the wrong signal if we pushed to take over too much control of the process. Bliss passed us a non-paper with the Australian response which is reproduced in para 3. Australian officials were open to hearing more concrete thoughts from the U.S. as to how a Management Committee would function, but they stated that their position would likely remain the same.

[1](#)3. (SBU) Begin text of Australian response:

KHMER ROUGE TRIBUNAL

UNITED STATES PROPOSED MANAGEMENT COMMITTEE

-- Australia thanks the United States for the opportunity to provide our views on its proposed management committee for the Khmer Rouge Tribunal (KRT).

-- Australia believes the KRT is the best mechanism we have to address impunity for the gross violations of human rights that occurred under the rule of the Khmer Rouge between 1975 and 1979. We are firmly and actively committed to the KRT and to its success.

-- We share the United States' view that it is important to ensure that the KRT meets international standards of justice, fairness and due process of law.

-- However, we do not regard a formal management committee as the most appropriate mechanism through which donors and other interested States may ensure these international standards are met.

-- We note that:

-- a formal management committee is not envisaged in the 'Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea' (Agreement);

-- the Agreement expressly contemplates that international involvement, including through the provision of personnel and financial support, is contingent on the KRT continuing to meet international standards. In particular, Article 28 (which provides that the United Nations may withdraw its participation in the KRT should the Cambodian Government change the structure or organization of the KRT or otherwise cause it to function in a manner that does not conform with the terms of the Agreement) is designed to

provide international oversight, via the United Nations, of the KRT to ensure it meets these international standards;

-- it is not clear how such a management committee would relate to, or engage with, the work of the Cambodian Khmer Rouge Trials Task Force; and

-- the proposal is likely to encounter resistance from the Cambodian Government, particularly as it is being raised a considerable time after the finalization of the Agreement.

-- Although the KRT is a hybrid tribunal, it operates within the existing Cambodian court structure as Extraordinary Chambers. This domestic operation of the KRT (albeit with international involvement and assistance) is distinct to that of the Sierra Leone Special Court (SLSC) which operates independently of, and has primacy over, the national courts of Sierra Leone. We note that the SLSC Management Committee was set up contemporaneously with the SLSC itself and was expressly contemplated in the 'Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone' (Article 7).

-- Australia is of the view that donors and other interested States should closely monitor the establishment and operation of the KRT, including through close cooperation with the United Nations and Cambodian Government to ensure the KRT's process is credible and legitimate. Australia looks forward to working with donors and other interested States in Phnom Penh, capitals and New York (as appropriate) to informally discuss and monitor the KRT's progress, including its conformity with international standards.

-- Australia would welcome a financial contribution by the United States to the KRT.

End text.

STANTON